

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

CHARLES TALBERT : CIVIL ACTION
V. : NO. 3:21-CV-01669
THEODOR VOORSTAD, MD, et al. :

MOTION OF DEFENDANT, THEODOR VOORSTAD, MD, TO DISMISS THE AMENDED COMPLAINT (DOC 13-1) OF PLAINTIFF, CHARLES TALBERT, FOR FAILURE TO STATE A CAUSE OF ACTION PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6)

Defendant, Theodor Voorstad, MD (“Dr. Voorstad”), respectfully requests that this Court grant his Motion to Dismiss the Amended Complaint (Doc. 13-1) filed against him by Charles Talbert (“Talbert”) contending that while he was incarcerated by the Commonwealth of Pennsylvania he failed to receive appropriate medical care for a variety of reasons as required by the Eighth Amendment of the United States Constitution and states in support thereof the following:

1. Talbert contends that the Commonwealth of Pennsylvania incarcerated him as an inmate and subjected him to medical care in violation of the Eighth Amendment of the United States Constitution. A copy of the Amended Complaint is attached hereto as Exhibit “A”.
2. On September 28, 2021, Talbert filed a Complaint, alleging Constitutional violations against seven Defendants, including Dr. Voorstad and encompassing a range of claims.
3. Dr. Voorstad filed a Motion to Dismiss with supporting Brief. On

December 9, 2021, the Court granted Talbert's Motion to Amend the Complaint.

A copy of the Amended Complaint is attached as Exhibit "A"

4. Talbert allegations against Dr. Voorstad begin on paragraph 24.

Exhibit "A".

5. Talbert's contends that on August 20, 2021, he was sent to Holy Spirit Hospital. He states that a physician gave him orders to have flexeril and twice the normal portion of food. Exhibit "A", paragraph 24.

6. When he returned from the hospital, Dr. Voorstad would not give him the recommended flexeril or twice the normal portion of food. Exhibit "A", paragraphs 25-28.

7. Talbert alleges deliberate indifference, violation of Title II of the ADA and equal protection concerning medical care. Exhibit "A", paragraph 28.

8. Talbert failed to exhaust his Administrative Remedies as required under law to maintain an Action.

9. The Complaint fails to contain sufficient averments to state a cause of action to establish deliberate indifference to a serious medical need. In order to state a cause of action pursuant to 42 U.S.C. §1983 and the Eighth Amendment of the United States Constitution, Talbert must plead deliberate indifference to a serious medical need. Estelle v. Gamble, 429 U.S. 97 (1976).

10. No information sufficient to support the requirements of Estelle, supra appear in the Complaint. Consequently, the Complaint fails to state a claim as a matter of law pursuant to Federal Rule of Civil Procedure 12(b)(6).

Exhibit "A", paragraph 233-237.

11. Talbert failed to plead and establish the necessary requirements for deliberate indifference.

12. The judgment of prison doctors and medical providers are presumed valid unless the inmate provides evidence that the decision was such a substantial departure from accepted professional judgment, practices or standards as to demonstrate that the person responsible actually did not base the decision on such judgment. White v. Napoleon, 897 F.2d 103, 113 (3d Cir. 1990).

13. Dr. Voorstad did not violate the ADA.

14. Dr. Voorstad did not violate any 14th Amended Right to equal protection.

15. Defendant incorporates by reference, as if set forth herein in full, his Brief in support of his motion to dismiss and any verification from regarding Talbert's exhaustion of administrative remedies requesting that the complaint be dismissed.

WHEREFORE, Defendant, Theodor Voorstad, MD, respectfully request that his Motion to Dismiss Plaintiff, Charles Talbert's, Amended Complaint be granted for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6).

GOLD & FERRANTE, PC

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CERTIFICATE OF SERVICE

I hereby certify that I have sent a true and correct copy of Defendant, Theodor Voorstad, MD's Motion to Dismiss the Amended Complaint via First Class Regular Mail and ECF Filing (where noted below) on this date to the following individuals:

Smart Communications/PA DOC
Charles Talbert, QA-4727
SCI-Camp Hill
PO Box 33028
St. Petersburg, Florida 33733
US First Class Regular Mail

/s/ Alexander R. Ferrante
ALEXANDER R. FERRANTE

DATE: January 28, 2021